

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 PACIFIC OFFICE AUTOMATION,)
INC., an Oregon corporation,)

4 Plaintiff,)

Case No. 3:20-cv-00651-AC

5 v.)

6 PITNEY BOWES, INC., a Delaware)
corporation, et al.,)

February 22, 2022

7 Defendants.)
8)

Portland, Oregon

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15 **Telephone Oral Argument**

16 TRANSCRIPT OF PROCEEDINGS

17 BEFORE THE HONORABLE JOHN V. ACOSTA

18 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
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APPEARANCES

FOR THE PLAINTIFF: Ms. Veronica L. Manolio
Manolio & Firestone, PLC
8686 E. San Alberto Drive, Suite 200
Scottsdale, AZ 85258

Mr. Jamison R. McCune
Bodyfelt Mount, LLP
319 S.W. Washington Street, Suite 1200
Portland, OR 97204

FOR THE DEFENDANTS: Mr. Philip S. Van Der Weele
Ms. Elizabeth H. White
K&L Gates LLP
One S.W. Columbia Street, Suite 1900
Portland, OR 97204

COURT REPORTER: Bonita J. Shumway, CSR, RMR, CRR
United States District Courthouse
1000 S.W. Third Avenue, Room 301
Portland, OR 97204
(503) 326-8188
bonita.shumway@ord.uscourts.gov

(P R O C E E D I N G S)

(February 22, 2022; 1:31 p.m.)

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THE COURT: Good morning -- or good afternoon, I should say now. This is Judge Acosta. I'm going to take roll. Who is there for the plaintiff?

MS. MANOLIO: Good afternoon, Your Honor. Veronica Manolio, appearing for Plaintiff Pacific Office Automation, or POA.

THE COURT: Thank you.

Anyone else there for the plaintiff?

MR. MCCUNE: Good afternoon, Judge Acosta. Jamison McCune, local counsel for POA.

THE COURT: Thank you.

Anyone else for plaintiff?

(No response.)

THE COURT: All right. Thank you.

And for defendant?

MR. VAN DER WEELE: Good afternoon, Your Honor. Phil Van Der Weele from K&L Gates on behalf of the defendants.

THE COURT: Thank you.

Anyone else for the defendants?

MS. WHITE: Good afternoon, Your Honor. Elizabeth White, also from K&L Gates, for the defendant.

THE COURT: Thank you.

1 We do have a court reporter. Make sure to speak
2 clearly and identify yourselves when you do speak.

3 All right. We are here to talk about the motion to
4 compel, the third motion which has not yet been resolved.

5 Before we get to that, I have some questions. First,
6 since the time the motion has been briefed and the parties have
7 engaged in discussions about discovery issues, have any of the
8 disputes in the motion been resolved?

9 Ms. Manolio, I'll start with you.

10 MS. MANOLIO: Your Honor, let me be very candid with
11 you. In going back and rereading all of these items, it
12 literally made me cringe, because I believe personally
13 Mr. Van Der Weele and Ms. White and I have come so far since
14 this motion practice. I honestly believe that the majority of
15 these issues have been addressed, if not resolved. As we sit
16 here today, I believe only Mr. Van Der Weele or Ms. White could
17 tell you what they think is still outstanding.

18 From my perspective, since August of last year, when
19 I responded, we've had much better communication, much better
20 flow of information, and I thought that this issue would have
21 been resolved until Mr. Van Der Weele brought it up when we
22 were talking about the recent status conference. So to be
23 honest, I don't know, Your Honor. I don't understand what
24 could be left.

25 THE COURT: Thank you. All right.

1 For defendant, Mr. Van Der Weele, will that be you?

2 MR. VAN DER WEELE: Yes, Your Honor.

3 First of all, the motion that was scheduled for oral
4 argument today is the defendants' renewed motion on the first
5 and second motions to compel. That motion presents two narrow
6 issues that have not been resolved in the wake of Your Honor's
7 granting of the original first and second motions to compel.
8 That motion, in earlier status reports, that motion was never
9 represented as having been resolved or on a pathway to
10 resolution. So the issues that are outstanding in that motion
11 have been outstanding really since June, and they are just two
12 of them, and I'm prepared to present oral argument on that at
13 such time as Your Honor may wish during today's hearing. So
14 that is the renewed motion.

15 There is -- and I don't know if Your Honor was asking
16 about another motion or if that was the focus of Your Honor's
17 question. I apologize.

18 THE COURT: No, let me just start it from that
19 correct place. The motion that we're talking about right now
20 is No. 67, the renewed motion, and that's been out there for
21 quite some time.

22 I am looking, however, at the parties' joint status
23 report which they filed on December 7th, and on page 2 of that
24 report, it talks about the status of the defendants' three
25 discovery motions. The renewed motion remains unresolved.

1 That's what we're here talking about. There was also a motion
2 to modify the stipulated protective order, which the parties
3 represented they had resolved. That had been my motion, Docket
4 No. 69.

5 There was a third motion to compel that was
6 represented in the joint status report that the parties are
7 close to resolving. That was Docket No. 71. And the defendant
8 finally was determining whether a fourth motion to compel might
9 be necessary. I think that brings us current.

10 MR. VAN DER WEELE: Your Honor, this is Phil
11 Van Der Weele. If Your Honor would like us to address the
12 third motion and the potential fourth, I can do that.

13 I would note there was a subsequent joint status
14 report filed after the December one. It's Docket No. 93. It
15 was filed on January 24. It's similar to but not exactly
16 identical to the one filed in December, so I'm just -- just
17 would note that Document 93 is the latest and greatest joint
18 status report.

19 THE COURT: Thank you. I see it now. Thank you.

20 So let's see if we can take care of what might be
21 short issues.

22 In that most recent status report, which is Docket
23 No. 93, filed January 24, the defendants -- that is,
24 Mr. Van Der Weele, your client -- indicates you will advise the
25 Court at the next status conference of whether a hearing on the

1 third motion to compel is necessary.

2 Are we going to need a hearing on that one?

3 MR. VAN DER WEELE: I'm not sure, Your Honor. What I
4 can tell you briefly is that it is true that progress has been
5 made since the motion has been filed. However, I would say
6 that progress has stalled. As the status report notes on page
7 2 -- this is under the defendants' position -- we've had three
8 meet-and-confer conferences, these are by phone or by Zoom,
9 that encompass the third motion to compel. POA did produce
10 some documents in response to that, and then on December 1, I
11 sent an email outlining to Ms. Manolio the issues that remained
12 outstanding.

13 Since then I have sent four reminder emails on that,
14 reminding what's outstanding on this third motion. The fourth
15 and final email I sent on January 21, which was three days
16 before the filing of the joint status report. And if you look
17 at page 3 of the joint status report, it's kind of the first
18 full paragraph, where it says "plaintiff's position," cutting
19 through -- cutting to the chase, there's a representation in
20 there that additional responses would be forthcoming. That's
21 in a parenthetical on page 3 under point 2.

22 Well, that was a month ago, and there have not been
23 any additional responses forthcoming since then, so I'm still
24 waiting. And I don't know when or whether I'm going to get
25 anything more. But to me, that's what -- if I don't get the

1 items that were outlined in my December 1 email, then I would
2 say a motion would be necessary, but I just don't know whether
3 or when I'm going to get those.

4 THE COURT: Thank you.

5 And then with respect to a possible fourth motion,
6 where are we on that one?

7 MR. VAN DER WEELE: So on that one, we have
8 conferred. I would say once again that progress has stalled,
9 although "progress" is a relative term.

10 This is a request for production that we served in
11 August. The plaintiff never served any written objections. To
12 date we have not gotten a single document in response to any of
13 these requests. Three of requests, there was nothing to
14 discuss, there weren't any questions or problems with them, we
15 just haven't gotten any documents.

16 The other three -- this is three out of six in the
17 fourth -- we've had some discussions on it and some back and
18 forth. And, again, in plaintiff's position set forth on page 4
19 of the joint status report, in the carryover paragraph at the
20 top of page 4, plaintiff says, "Plaintiff does not believe that
21 the fourth request for production will become an issue for the
22 Court and fully intends to have this matter resolved before the
23 next status conference."

24 Well, the issue is not resolved because I haven't
25 gotten a single document in response to any one of the six

1 requests, and I again have no idea whether or when I will be
2 getting anything.

3 THE COURT: All right. Thank you.

4 We'll pick those up at the end, and I'll hear from
5 Ms. Manolio about that. Let's resolve the motion that is
6 before us.

7 All right. We've got issues with respect to the
8 interrogatories and requests for productions. I'm going to
9 start with the interrogatories. For the record, those are 1,
10 2, 4, 5(a) through (c), 6(a) through (c), and 7.

11 The defendants' overall argument is that the
12 plaintiff has failed to comply with its duty under Rule
13 33(d)(1) to specify the records that must be reviewed, quote,
14 in sufficient detail to enable the interrogating party to
15 locate and identify them as readily as the responding party
16 could.

17 All right. One of the notable aspects of this
18 particular dispute is the defendants' assertion that plaintiff
19 has provided only examples of responsive documents. And by
20 that I believe identified only examples of documents contained
21 in the broader production of documents in response to the
22 requests for production.

23 All right. One thing that the defendant also says is
24 that the spreadsheet provided on December 4, 2020 has not been
25 updated with respect to the documents referenced in respect to

1 these interrogatories, and that because there are so many
2 emails -- more than 30,000 -- it is difficult to determine what
3 documents plaintiff will rely on by providing only examples.

4 So Mr. Van Der Weele, let me start by just asking if
5 that is generally a correct summary of the interrogatory issue.

6 MR. VAN DER WEELE: Yes, it is, Your Honor. And I
7 would start -- I would add that the spreadsheet that we're
8 talking about is Document 68-1, and in form, that spreadsheet
9 is something like you would expect to see when someone is
10 answering an interrogatory by -- in reliance on FRCP 33(d)(1);
11 that is, it identifies documents -- in this case emails.
12 They're not Bates numbered, but they have a date and a "from"
13 and "to" so we can find them. They identify emails, and then
14 on the column on the right, it lists the interrogatory number.
15 So the spreadsheet explicitly links documents to interrogatory
16 number, and that linkage is both necessary and sufficient to
17 comply with FRCP 33(d)(1).

18 One of the problems, as Your Honor noted, is that
19 these are expressly stated to be only examples, so the
20 spreadsheet is under-inclusive in that regard.

21 The other problem which Your Honor didn't mention,
22 although at least not directly, but I think you may have had it
23 when we talked about the update, is that the responses to the
24 corresponding document request -- that is, the document request
25 that asks what documents did you rely on in answering these

1 interrogatories -- those responses are over-inclusive, in that
2 the boilerplate response is to identify every single document
3 that the plaintiff produced as documents relied on in
4 responding to the interrogatory.

5 So what the plaintiff has said is that it relied on
6 every single document it produced in responding to each of six
7 very different interrogatories. That can't possibly be
8 correct, and that over-inclusive response makes the spreadsheet
9 meaningless. So we have under-inclusiveness, we have
10 over-inclusiveness, to the point of making it meaningless.

11 And then the third column, as Your Honor already
12 noted, it's out of date because it goes back to December of
13 2020, more than a year ago, and plaintiff has made a number of
14 supplemental document productions since then.

15 THE COURT: Thank you.

16 Ms. Manolio, go ahead, please.

17 MS. MANOLIO: Thank you, Your Honor.

18 First and foremost, again I'm at a loss here because
19 what I hear Pitney Bowes arguing is that it can do what POA
20 cannot do, and that is, POA produced documentation. It
21 provided a spreadsheet back in December 2020, and said these
22 are the documents relied on.

23 When we were told that we were needed to supplement
24 it because there were some thousand number of emails, I
25 absolutely took the Court's order to heart. We supplemented,

1 and the body of our supplemental responses identifies specific
2 documentation, which I have filed in conjunction with my
3 declaration, which is No. 79, the Docket 79, and provided
4 specific documentation related to each of those specific
5 interrogatories or requests for production.

6 I did not go back and update the spreadsheet because
7 I provided supplemental responses. What I read the motion as
8 being, Judge, they didn't properly calibrate. That was the
9 word that was used. There's not a correct calibration of the
10 updated information you gave to me with the updated
11 spreadsheet. That does not mean, Your Honor, for one moment
12 that POA did not go back and specify documents that were relied
13 on. Mr. Van Der Weele and I have had this discussion many
14 times. In the supplemental responses -- and I did a
15 supplemental response, a second supplemental response, both of
16 which are included in a filing No. 79. I identified the
17 specific documents relied on. But, of course, Your Honor, in
18 the interests and the benefit of my client, I always say we
19 reserve the right to identify additional documents if they
20 become necessary to this specific interrogatory. That does not
21 mean I'm relying on the overall picture of the some 30,000 or
22 3,000 -- it keeps going back and forth -- number of emails that
23 we produced. It was these are the specific documents, and if
24 we find something else within these documents that have been --
25 have already been produced, we reserve the right to later

1 identify those. But I'm not intending and have never intended
2 to leave Pitney Bowes in a guessing game as to which specific
3 items were relied upon, and the supplemental answers cured
4 that.

5 Hearing again the issues of, well, it's
6 under-inclusive and over-inclusive leaves me in a quandary of
7 what are you exactly asking me to do? If you're just asking me
8 to go back and supplement the December 2020 spreadsheet, then
9 say that. But it's already been done in the body of the
10 supplemental disclosures -- or excuse me, supplemental
11 discovery responses, Your Honor.

12 In my opinion, this is form over substance. Nobody
13 is saying from either side that we didn't produce the
14 information, and nobody can legitimately argue that we didn't
15 produce the information and identify which emails or which
16 documents correlate to each specific question. The real issue
17 that's being argued is we didn't go back and update the
18 December spreadsheet and correlate, but it makes no difference,
19 Your Honor. We're not leaving the defense without the ability
20 to understand what we're using, what we're relying on or where
21 the allegations come from. And that's the frustration that I
22 have, especially in the light of the fact that we have received
23 over 87,000 documents from Pitney Bowes without a tie of any of
24 the discovery responses being tied to specific documents. It
25 was, well, we did a custodial dump, here's our dump, you figure

1 it out. But when it comes to you, POA, we want you to tell us
2 every single document.

3 And, Your Honor, I did do the very best we could to
4 limit those responses and to supplement to identify the
5 particular documents on which each interrogatory response
6 relied.

7 THE COURT: All right. I am looking at the
8 declaration -- the declaration and the supplemental responses
9 that is Document No. 79, and specifically I'm looking at Docket
10 No. 79-1, and at page 9. And at page 9, I see a list of emails
11 by date, author, and recipient. Is that the kind of
12 supplementation to the December 2020 spreadsheet that you're
13 referring to?

14 MS. MANOLIO: It is one of the issues, Your Honor.
15 If you look at that -- and I understand exactly where you're
16 looking, and you're looking at page 9. I'm looking at that
17 supplemental response in its entirety, which actually starts
18 back on page 7.

19 And what you see on page 9, that table, is what we
20 had originally provided in 2020. So I incorporated that. The
21 supplement then would be everything that goes before that, Your
22 Honor, starting on page 7, where I give a supplemental response
23 and I explain, you know, the supplement of what they asked us
24 to do, the supplement of answering the questions, and then say
25 these are examples of those emails where I incorporate what was

1 already previously identified.

2 And, Your Honor, we say if there are more that we
3 find, we will absolutely update. But to date, Your Honor, that
4 document -- or that email production has been supplemented by
5 additional facts that they asked for. We hadn't found at this
6 point in time -- again, remember we're talking about August of
7 last year. At that point in time, we hadn't found emails that
8 we said would specifically answer that interrogatory. But I do
9 understand my duty to supplement if an additional email is
10 discovered or read that specifically addresses interrogatories,
11 of course we would come back and supplement.

12 THE COURT: All right. I'm still looking at the same
13 document.

14 MS. MANOLIO: Uh-huh.

15 THE COURT: Supplemental response, which actually
16 begins at page 6.

17 Hang on a minute.

18 MS. MANOLIO: Sure.

19 THE COURT: And it pertains to material
20 misrepresentations of fact or material omissions by the
21 defendant, which you say in your supplemental response at the
22 bottom of page 6, "include at least the following items."

23 Now, when you say "at least," what exactly does "at
24 least" mean?

25 MS. MANOLIO: Here's what the difference is, Your

1 Honor, and I apologize because I did try to explain this, and
2 obviously I'm not doing a very good job.

3 Some of the representations that were made were not
4 made in an email or a written format, so I couldn't identify an
5 email to go with what my supplement is. Starting on page 7,
6 where it has a supplemental response, I go through the material
7 representations -- or misrepresentations, and talk about
8 material misrepresentations that could have been made in person
9 as versus an email. If it was made in person or in a
10 face-to-face meeting, I can't provide a document that
11 demonstrates it.

12 THE COURT: Right.

13 MS. MANOLIO: So that's why I used the term "at
14 least," because we know those are the emails that justify the
15 misrepresentations or the omissions I'm talking about.
16 However, if it was something that was done in a face-to-face
17 meeting or an in-person meeting, I couldn't include a document,
18 but I certainly documented the substance and meat of the
19 material misrepresentation or omission.

20 And my goal was, Your Honor, not only to give you the
21 documentation we have so far -- or, excuse me, to give Pitney
22 Bowes the documentation we have so far but also to say there
23 may be additional emails that are discovered when both sides
24 continue to exchange information. I have no problem updating
25 that email spreadsheet when additional emails pertain

1 specifically. And in the subsequent supplemental disclosure, I
2 do identify additional emails that are specifically responsive
3 to this question, because additional emails were reviewed and
4 said, oh, that also falls into line with the response to that
5 request.

6 THE COURT: I'm looking at the supplemental response
7 again, and to make sure the record is clear, still on Document
8 79-1, and this pertains to Interrogatory No. 7. The
9 supplemental response begins on the next page -- page 6 -- and
10 contains subparts (a), (b), (c), (d), right.

11 Now, here's my question.

12 MS. MANOLIO: Sure.

13 THE COURT: Subsection (d) contains that list of
14 emails by author, recipient, and date. With respect to
15 subsections (a), (b), and (c), you have provided narrative
16 descriptions but not referred specifically to emails. So are
17 those narrative descriptions intended to describe conversations
18 rather than information based on emails?

19 MS. MANOLIO: Unfortunately, Your Honor, each one
20 specifically -- each one specifically states it. In other
21 words, the ones that are oral say these were made orally, but
22 written materials include, and then I cite the written
23 materials or the emails that are inclusive. So -- and I'm not
24 trying to be cute at all, Your Honor. I'm trying to explain
25 that if -- Let's look very specifically at letter (c), which is

1 on page 8.

2 THE COURT: Right.

3 MS. MANOLIO: Where I say many of the representations
4 were made in oral communications throughout a series of
5 meetings. And, Your Honor, we've now had deposition testimony
6 of those people that I talk about: Greg Pattison, Bernard
7 Cory, Mr. Murray, and Mr. Pitassi. Those people have all been
8 deposed and have all talked about the oral representations.

9 I then reference other oral representations were made
10 in phone conversations. Again, both sides have had the
11 opportunity to depose those witnesses.

12 And then when I say, "written material
13 misrepresentations were made," and I specify where those
14 documents are, those are in the specific emails, Your Honor,
15 that are identified in the table below.

16 And so you're right that what I didn't do is say the
17 written partner agreement and meter price book ties to, you
18 know, email dated blah, blah, blah or email dated blah, blah,
19 blah. But it was very specific, it's regarding the partner
20 meter price book.

21 And again, Your Honor, these are topics that were
22 exhaustively covered in depositions. So there's really not a
23 good justifiable argument that you didn't know what emails I
24 was referring to. They were on the list, you produced these
25 documents, and they were discussed extensively during

1 depositions.

2 THE COURT: So in subsection (c) of that supplemental
3 response, the one that you were using to illustrate your
4 comments, which does start, "Many of these misrepresentations
5 made above were made in oral communications," but in the third
6 sentence, it says, "Written material misrepresentations were
7 made: (1) in the written dealer agreement."

8 I assume that's been produced and there's no dispute
9 or confusion what the written dealer agreement is.

10 MS. MANOLIO: There could not be. Absolutely, Your
11 Honor, there could not be any confusion. It has been the topic
12 of almost every deposition -- I wouldn't say every deposition,
13 that would be a little flippant of me, but in nearly every
14 deposition we've gone through the dealer agreement extensively.

15 THE COURT: There's subsection (2), and then
16 subsection (3) -- sorry, part (3) of subsection (c) states, "in
17 emails between Pitney and POA, identified on the spreadsheet
18 produced as being specifically responsive to Interrogatory
19 No. 7, but for convenience which are identified again here in
20 the table below."

21 So that table is the emails -- consists of the emails
22 referred to, correct?

23 MS. MANOLIO: That is correct, Your Honor, yes.

24 THE COURT: Now, is it also correct that that table
25 is not at this time a necessarily all-inclusive list of the

1 emails you might rely on?

2 MS. MANOLIO: That is correct. And the reason I can
3 say that is because there are supplements to this that identify
4 additional documentation that is responsive to this specific
5 question.

6 THE COURT: Okay.

7 MS. MANOLIO: Go ahead. I didn't mean to interrupt
8 you.

9 THE COURT: No, that's fine.

10 All right. So here is my overarching question. At
11 what point, meaning at what date will the defendant be able to
12 say with confidence that every document you intend to rely on
13 to support your allegations has either been identified or
14 produced, and it can know that if it goes to trial, the
15 universe of exhibits from which the plaintiff will draw is the
16 universe known to it as a result of discovery?

17 MS. MANOLIO: I think your question is what is the
18 date certain. And again, I am not being flippant with you at
19 all, Your Honor. It depends on every time I supplement if
20 there are additional questions, because I have been very, very
21 candid with Mr. Van Der Weele that even though I will produce
22 everything I think he's asking for, if something else comes up
23 and he wants more, I'm happy to produce that as well.

24 Now, I do want to -- again, I committed when we did
25 this joint report in January, and I disagree with some of the

1 assessment earlier about what the conversations were, but when
2 we filed this with the Court on January 24th, I was clear: I
3 will have everything to you and we could close fact discovery
4 by March 31. Are you comfortable with that?

5 And the response was -- from Mr. Van Der Weele was:
6 I'm not sure yet because you might think you've given me
7 everything but I might have supplemental questions.

8 And you know what? I'm okay with that. I wasn't
9 offended by that because I thought we were working together in
10 good faith to say, I'll keep producing, and if you think
11 there's something more, I'll continue to produce, and you tell
12 me when you think you have the entire universe. But I
13 committed to provide the entire universe of documents. No
14 later than March 31, everything will be in your hands.

15 THE COURT: All right.

16 MR. VAN DER WEELE: May I respond, Your Honor?

17 THE COURT: Not yet.

18 All right. So when discovery closes, a document not
19 produced by a party is a document that party will not be able
20 to rely on to support a summary judgment or response to a
21 summary judgment or as an exhibit at trial. That means two
22 things. It means, as my observation suggested, that it was
23 actually physically produced, whether that was in hard copy or
24 digital form.

25 Next, a document produced but not identified in

1 response to a specific interrogatory that is otherwise not
2 objectionable -- and those are the kinds of interrogatories
3 we're talking about right here, it seems -- cannot be used if
4 it is not tethered to a specific response or supplemental
5 response to an interrogatory.

6 Now, if we were dealing with a simple case of a
7 relatively contained record of a couple of hundred pages or so,
8 the defendants' concerns wouldn't be as concerning to me as a
9 case like this, where the parties acknowledge there are tens of
10 thousands of documents that are out there in various different
11 forms. So although, of course, the plaintiff is not required
12 to disclose its trial strategy to the defendant at any time, if
13 a proper interrogatory is posed and the response is not
14 complete, for whatever reason -- I'm not for a moment
15 suggesting that you're hiding anything, but if it's not
16 complete, then it falls short of satisfying the obligation
17 under the discovery rules to identify a document in response to
18 a proper question interrogatory. And that's all I want to make
19 sure that happens here.

20 And it may be that you've not had a chance to go all
21 the way through every single document yet. Sure, okay. But if
22 you're going to prepare exhibits for use in motion practice or
23 trial, then -- and they've been fairly requested, they have to
24 be produced. And that's my basic point here.

25 And if you believe that the defendants' requests are

1 overbroad, we can talk about that, but I'm not sure I've heard
2 you say that.

3 So now I'll stop there, and just give me a quick
4 answer. Are there overbreadth issues here?

5 MS. MANOLIO: Absolutely, Your Honor. I believe that
6 there are, and I will -- I do just want to note one other thing
7 because I don't know when is the appropriate time to talk about
8 it. If the Court is making a clear ruling that every response
9 needs to be tethered -- excuse me, every document needs to be
10 tethered, I am okay with that if that goes both ways, because
11 where I have --

12 THE COURT: Yes, it does.

13 MS. MANOLIO: Got it.

14 THE COURT: Yes, it does. Discovery is a two-way
15 street, to use the cliché, and a document that the defendant
16 does not produce or identify in response to an interrogatory
17 that it later intends to rely on in motion practice or in trial
18 will be stricken. So in a document-intensive case like this,
19 you just -- both sides have to make sure that they have
20 identified everything properly called for here in the request
21 for production or in an interrogatory. That's the deal.

22 Mr. Van Der Weele, before I continue, you had wanted
23 to make a comment. Go ahead.

24 MR. VAN DER WEELE: Well, I think, Your Honor, that
25 you actually covered largely what I was going to point out in

1 your statements. I do think, though, that there are a couple
2 of different issues being conflated here. The issue that is
3 the subject of our motion is compliance with FRCP 33(d), which
4 applies, of course, when somebody is relying on identification
5 of documents to answer an interrogatory.

6 THE COURT: Right.

7 MR. VAN DER WEELE: And I don't think that's an
8 overbreadth issue. That's just a sufficiency of the
9 identification. And I would just note, even with the example
10 that -- well, I guess you made your ruling, if it's not
11 identified, it can't be used, but just the page that you were
12 talking about, page 9 on Document 79-1 is a list of emails
13 there.

14 THE COURT: Yes.

15 MR. VAN DER WEELE: And so just taking that as an
16 example of the problem I'm having, first of all, the fraud
17 claim here is a fraud in the inducement for a contract that was
18 signed in July of 2016. You will note that all but two of the
19 documents in the list are after July of 2016. So we've got
20 some kind of time warp going on here where these are
21 misrepresentations in a fraudulent inducement that are coming
22 long after the contract was signed.

23 Secondly, the only two documents you see there that
24 are in the relevant time period -- well, actually only one,
25 actually, the June 27th of 2016, to the previous page that

1 plaintiff talks about misrepresentations made in May of 2016,
2 and we don't have any emails from those, so I assume that if
3 they're not linked there, they can't be used.

4 And, of course, this was only one interrogatory --
5 this was Interrogatory 7, one of the six that we had moved on.
6 If you were to look at other interrogatories, you would find
7 the responses are again laced with the words "examples."

8 But, again, I take it from Your Honor's ruling that
9 if the linkage isn't provided for these interrogatories -- that
10 is, if the documents are not specified as being linked to an
11 interrogatory -- then the plaintiff can't rely on other
12 documents to prove what -- the issue that the interrogatory was
13 addressed to.

14 THE COURT: All right. Let me make two observations.
15 First, with respect to the list on page 9 of Document 79-1,
16 where there are three columns, the leftmost is "email date or
17 dates" and the middle column is "email from" and the rightmost
18 column is "email to."

19 With respect to the chronology, where many of those
20 emails identified are after 2016, it seems to me that for
21 whatever purpose or purposes the plaintiff identified those
22 emails in response to that particular interrogatory, that is
23 part of their litigation strategy, meaning their case theory,
24 their theme, how they intend to prove that these fraudulent
25 misrepresentations were made.

1 Now, it's a different question whether any of those
2 post-2016 emails are admissible for that purpose, but I'm just
3 going to say simply because it's not apparent on the face of
4 the response how those particular documents might link to the
5 particular claim that you've asked about doesn't mean that
6 that's an improper list.

7 MR. VAN DER WEELE: Yes, Your Honor.

8 THE COURT: Next -- all right. I continue to be a
9 little troubled by reference to examples. So
10 Mr. Van Der Weele, I share your concern there, so I need to ask
11 Ms. Manolio a question.

12 MS. MANOLIO: Sure.

13 THE COURT: Ms. Manolio, what exactly, when you say
14 "examples," do you mean by "examples"?

15 MS. MANOLIO: Here is my absolute best answer to you,
16 Your Honor. Let me take, for example, what we're looking at is
17 79.1. Let's look at Document 79.1, and let's just go to
18 Interrogatory 1, because it is one of the interrogatories on
19 which Mr. Van Der Weele has moved for compelling. Okay?

20 No. 1, I give a -- the original answer is in regular
21 type format. That original answer is on page 2. Where I
22 supplemented, I said: Since the time of this interrogatory,
23 POA has answered a second request for production, and I give
24 additional information in the bold italicized portion.

25 Correct, Your Honor? Do you see what I mean?

1 THE COURT: I see it.

2 MS. MANOLIO: Then, Your Honor, I would like you to
3 look at 79.4 -- or 79-4. And I apologize, my version looks
4 like it was -- the formatting looks horrible but the meat of
5 the information is there. And this is my second supplemental
6 response. And if you look at the response to No. 1, I
7 supplemented by saying "specific emails include." And Your
8 Honor, it is always been my practice to say these are examples,
9 but if I identify more, I will continue to supplement and give
10 you more. And --

11 THE COURT: All right.

12 MS. MANOLIO: When I did 79.4, Your Honor, if you go
13 on to the next page, I say now that we have depositions, I'm
14 going to supplementally identify more documentation, and I
15 specifically on page 3 of the second supplement give additional
16 examples of specific Bates numbers that tie back to that exact
17 same interrogatory. That is the reason why I used the word
18 "examples" in the beginning, so that as additional information
19 is learned, I supplement. But I don't intend at the end of the
20 day when we're done to say, oh, well, it was just an example,
21 so if I found something after discovery is closed, I get to use
22 it. I understand I don't get to use something that was not
23 properly disclosed or listed either in a response or a
24 supplement to a response.

25 THE COURT: All right. So let me articulate what I

1 think I hear from your explanation.

2 MS. MANOLIO: Okay.

3 THE COURT: When you say "examples," what you mean to
4 say is these are the documents which to date we have identified
5 and are responsive either to your request for production or
6 your interrogatory, and under our obligation to supplement, we
7 will provide additional answers as the information comes to
8 light. Correct?

9 MS. MANOLIO: 100 percent, yes, Your Honor. And
10 maybe I should use your words moving forward.

11 THE COURT: Well, sure, you may. But at a minimum,
12 let's just dispense with "examples", because I understand
13 Mr. Van Der Weele's concerns. If there's a hundred documents
14 and you cite ten, these are the kinds of things -- it tends to
15 suggest it is not inclusive of everything you know to date.

16 MS. MANOLIO: Understood.

17 THE COURT: So it seems to me we can fairly say that
18 what you have produced and identified is everything you're
19 aware of to date, but it is possible you will continue to find
20 discoverable documents which are responsive to either the RFPs
21 or the interrogatories. Correct?

22 MS. MANOLIO: That is correct, Your Honor.

23 And I want to take it one step further. I only
24 intend to find additional documentation in the body of what has
25 been disclosed. If there's something I'm going out searching

1 for more, that would be troublesome and I would understand
2 that. But when I say we've disclosed all of the emails, within
3 those emails if I find anything additional, I will identify it.
4 That's what I mean when I say these are examples in the emails,
5 but it's within the body I've already provided, not something
6 I'm going to go find new.

7 THE COURT: Understood. And don't use "examples,"
8 because we're just going to get confused again.

9 MS. MANOLIO: Makes sense.

10 THE COURT: When I asked you just a few minutes ago
11 by what date can we know that you've identified everything
12 responsive to the interrogatories or the requests for
13 production, it seems to me now that we've had this discussion
14 that everyone is on notice that by that date certain,
15 everything will be identified, and if it's not, it cannot be
16 used. And so when I refer to the cutoff date, it has to be the
17 cutoff date relevant to making the identification called for
18 either in the request for production or the interrogatories.

19 Again, it seems to me that looking at the
20 supplemental responses, that you are continuing to do that, and
21 here's the key: that these supplemental responses are in
22 addition or subsequent to what you provided in the December
23 2020 spreadsheet. Am I correct about that?

24 MS. MANOLIO: You are correct about that.

25 THE COURT: All right. And so when you say it is

1 form over substance to update a spreadsheet because you've
2 already provided by specific identification the additional
3 information in the supplemental responses, that is what you
4 meant, correct?

5 MS. MANOLIO: That is correct, yes, Your Honor.

6 THE COURT: All right. Thank you.

7 Mr. Van Der Weele, go ahead, please.

8 MR. VAN DER WEELE: I think, Your Honor, that that is
9 really it for the interrogatory responses, which was the first
10 issue, the first of two issues in the motion to compel.

11 I would just make one observation -- this is
12 something that Ms. Manolio and I have talked about before -- is
13 that it is possible that experts -- and this is particularly
14 for the antitrust issue, that experts may rely on -- as part of
15 the preparation of their reports may rely on documents that
16 might not be in the possession of either party or were in the
17 possession of the parties but not necessarily respond to the
18 document requests, and experts would be allowed to, you know,
19 rely on documents that hadn't been produced, but then they
20 would have to be produced in conjunction with the expert's
21 reports. And so that would be a bit of a qualification I think
22 to what Your Honor said before, but I think that Ms. Manolio
23 and I have that agreement, but I'll -- she'll tell me if I have
24 that wrong.

25 THE COURT: Expert discovery is different from fact

1 discovery and, Mr. Van Der Weele, your articulation is
2 accurate.

3 Ms. Manolio, any disagreement or anything to add?

4 MS. MANOLIO: Yes, unfortunately. Because this is
5 something I was going to say when you told us, let me give you
6 a cutoff date, and that is something that can be used or cannot
7 be used. I believe -- and I wrote this in my declaration --
8 that we are not 100 percent aligned or understanding, and I
9 just want to make sure we're clear for the record.

10 When we agreed to put our experts to a second phase,
11 if you will, the original thought was, in my mind, all the
12 damage information goes into the experts, because we both
13 identified we're going to need experts for the issue of
14 damages. Right? So in my head, it was damage information goes
15 with experts, phase two.

16 I believe -- and Mr. Van Der Weele, you can certainly
17 correct me if I'm wrong -- Mr. Van Der Weele's discussion with
18 me was anything factual related to damages you have to disclose
19 in fact discovery, but then what the experts choose to rely on
20 may involve more in phase two. And I scratched my head and
21 went, then why did we do it like this? It should have been all
22 discovery is phase one, including damages, including all the
23 financials, including everything, and then just expert reports
24 are phase two.

25 I just don't want there to be any gray area, and

1 right now, Your Honor, I'm afraid and fearful that there is.
2 The reason I say that -- and I put it in my declaration -- was
3 because I haven't gotten a single bit of financial information
4 from the defense, which I understand is going to come from
5 Mr. Van Der Weele in phase two. But some of the information
6 I've agreed to provide is financial and will go strictly to
7 damages, and I'm being told it needs to be done in phase one.
8 I just want to clear-cut that again both goes ways. I don't
9 care which.

10 THE COURT: Sure.

11 MS. MANOLIO: Go ahead.

12 THE COURT: Mr. Van Der Weele, go ahead.

13 MR. VAN DER WEELE: I strongly disagree I haven't
14 provided any financial information. I've provided numerous
15 voluminous spreadsheets --

16 THE COURT: Sure.

17 MR. VAN DER WEELE: -- of financial information.

18 THE COURT: We don't need to resolve that. Here's
19 the thing. Before you each depose the other's experts, you
20 should each have everything the opposing expert has relied on.

21 MR. VAN DER WEELE: Yes.

22 MS. MANOLIO: Got it. Yes.

23 THE COURT: Everything. That's the deal. So if
24 something wasn't produced in fact discovery, if it's produced
25 in conjunction with expert discovery and the expert is relying

1 on it, that's okay. Plenty of time to look at it, ask your own
2 experts about it, prepare for the deposition to question them
3 about it.

4 So if something -- if somebody makes a good faith
5 determination that this is really expert material and not
6 responsive to a request for production or interrogatory and my
7 expert is going to use it and it comes out in expert discovery,
8 that's fine. If the expert relies on it, it needs to be
9 produced in expert discovery.

10 Ms. Manolio, clear?

11 MS. MANOLIO: Yes. It is helpful, Your Honor. And I
12 do want to make clear I wasn't meaning to throw
13 Mr. Van Der Weele under the bus, I just want to make sure we're
14 all on the same page. That's all.

15 THE COURT: That's fine. Thank you for that.

16 Mr. Van Der Weele, you said that's one of the two
17 issues when you referred to interrogatories. Of course, we
18 still have requests for production.

19 I'm just going to take a flyer at this one. It seems
20 to me that there's a lot of overlap, but there is one
21 difference that you point out, and that is documents that were
22 produced but produced as they are kept in the usual course of
23 business, which I think you take issue with, and then a
24 supplemental search. So is that the remaining second issue we
25 need to talk about?

1 MR. VAN DER WEELE: I think the remaining second
2 issue is actually -- well, we may be talking about the same
3 thing, but it may even be narrower than that, Your Honor. The
4 second issue is simply Document Request 30.

5 THE COURT: Okay.

6 MR. VAN DER WEELE: And I think the searching part
7 might have been different ways that the plaintiff might comply
8 with that request, but frankly I don't -- as long as they
9 comply, we tried to give them some help on search terms, and if
10 it wasn't helpful, I don't care. Whatever they come up with is
11 up to them.

12 But Document Request 30 was part of our second motion
13 to compel, and Your Honor granted it. And in response -- after
14 Your Honor's ruling, we received a single document, and that
15 document was a letter to the plaintiff from another one of its
16 suppliers, a company called Francotyp-Postalia. I'll spell
17 that. It's F-r-a-n-c-o hyphen P-o-s-t-a-l-i-a. With that
18 spelling you can understand why we call it FP for short.

19 THE COURT: Right.

20 MR. VAN DER WEELE: And in that letter, FP canceled
21 its supplier relation with the plaintiff. Now, if that were
22 the end of the story, plaintiff would have fully complied with
23 Document Request 30, but that is not the end of the story. At
24 some point after FP canceled its relation with the plaintiffs,
25 plaintiff got reinstated as a dealer of FP. And we know that

1 for a lot of reasons, because the plaintiff told us that in the
2 interrogatory answer.

3 So we are seeking -- Document Request 30 is seeking
4 the communications between the plaintiff and FP that led to
5 that reinstatement. And the reason those communications are
6 relevant is that the plaintiff blames Pitney Bowes, blames the
7 defendant for the fact that FP canceled its dealer relation
8 with the plaintiff, and plaintiff is seeking damages for what
9 it had to go through to get reinstated as a dealer of FP.

10 And that explanation, if Your Honor wants to get more
11 granular, it's in the plaintiff's second supplemental response
12 to defendants' interrogatories. It's document 68-4, page 14.4,
13 with an itemization of damages. I can read it if you want or I
14 can just keep going.

15 But anyway, the point is that that's the relevance.
16 They are saying we got canceled, FP canceled us as a dealer,
17 and it's your fault, Pitney. We had to spend money to get
18 reinstated, those are damages. And so I believe, based on
19 that, that we are entitled to the communications that led to
20 the reinstatement of FP as a dealer -- I'm sorry, led to the
21 restatement of plaintiff as a dealer of FP, what were the
22 negotiations, how did it come about, what were the terms of
23 that reinstatement, and what large investment did the plaintiff
24 have to make, or it says it had to make in its interrogatory
25 answer, what is that.

1 You know, I guess we'll save for another day whether
2 that's a viable theory of damages, but I'm sure we'll be
3 talking about that later, but the plaintiffs here, they've
4 advanced the theory, so we believe that we're entitled to the
5 documents requested by Request No. 30.

6 Now, how they go about it, what searches they do to
7 get those documents, that's really up to them. I've made it
8 clear that we are not asking for all the transactional
9 documents that exist between FP, a supplier, and the plaintiff,
10 that is all the purchase orders, that sort of thing, and
11 because again that's -- that's not what we're talking about
12 here. We're talking about the communications that led to the
13 reinstatement, and what did the plaintiff have to do in order
14 to get reinstated. That's the subset of documents that we're
15 looking for here and that's what Request 30 asks for.

16 THE COURT: Understood.

17 Ms. Manolio.

18 MS. MANOLIO: Thank you, Your Honor.

19 First of all, I want the Court to actually look at
20 the Request for Production No. 30. And I am looking, Your
21 Honor, just for clarity's sake, at Document 79-2. Request for
22 Production No. 30 appears on page 13 of that document.

23 The request that was asked of us was give us all
24 documents evidencing communications or negotiations other than
25 Pitney to become an authorized dealer.

1 Our response to that was there were no communications
2 regarding becoming an authorized dealer during the relevant
3 time period. The reason for that is simple, Your Honor. POA
4 was an authorized dealer of SP well before Pitney Bowes came in
5 the picture. When Pitney Bowes came in the picture, POA agreed
6 to not become an authorized dealer for anyone else. So in the
7 relevant time period that Mr. Van Der Weele identified, there
8 are none, there are no responsive documents because we didn't
9 become an authorized dealer.

10 In an abundance of caution, I say, "However, I am
11 notifying you that FP did cancel its dealer agreement with
12 POA." And, Your Honor, we have produced the cancellation
13 letter. There is no dispute about that. There couldn't be.

14 THE COURT: Okay.

15 MS. MANOLIO: We also know, Your Honor -- Your Honor,
16 that there were several communications or questions during
17 depositions about what happened and how POA got reinstated.
18 However, what Mr. Van Der Weele has done is morphed his request
19 for -- his Interrogatory No. 30 -- or excuse me, his Request
20 for Production No. 30, and said, oh, well, now that really
21 meant all communications. It didn't mean becoming an
22 authorized dealer, it meant subsequent actions, subsequent
23 endeavors, whatever you needed to do. It's not what was asked.

24 But I still didn't have a problem with cooperating,
25 Your Honor, and when I hear today that now it's I want purchase

1 orders and financial data, that information I've already agreed
2 to provide, that's not a problem. But I have made it clear in
3 subsequent responses, including our supplement to that same
4 request for production, there are other additional written
5 communications, because when that dealership agreement got
6 canceled, the president went and met with POA in person -- or
7 went and met with SP in person and agreed to make a large
8 purchase to get reinstated. I can't produce documents that do
9 not exist.

10 THE COURT: True.

11 MS. MANOLIO: And I can't agree that
12 Mr. Van Der Weele gets the opportunity to say, well, because
13 the information changed, my question changes, and now you are
14 on the hook to answer the interrogatory -- the request for
15 production in any manner in which I morph it to be. That's not
16 what the question was.

17 THE COURT: Understood.

18 So before I hear from Mr. Van Der Weele, I'm going to
19 tell you what I think you should be providing, and then I'll
20 hear from Mr. Van Der Weele.

21 MS. MANOLIO: Okay.

22 THE COURT: You should be providing two, I'm going to
23 say, distinct groups of documents, both of which pertain to the
24 relationship between POA and SP. The first group are the
25 communications -- not the transaction documents, the

1 communications that went to the initial business relationship.

2 The second group is the set of communications -- and
3 if there's only one document, there's only one document -- that
4 pertain to the renewal or reinstatement of the business
5 relationship between POA and SP.

6 Now, with that second group, if there is only a
7 single document to produce, then there's only a single document
8 to produce, and you simply need to make sure that that's clear,
9 if you haven't already made that clear. Understood?

10 MS. MANOLIO: I understand completely. My main
11 concern is there was never a discussion or a request for
12 anything about the initial relationship with SP. That would be
13 an entire new subset of documents, because it was well outside
14 of the date range that Mr. Van Der Weele gave me. And I'm
15 telling you, Your Honor, that POA was in business with SP for
16 many, many years before this. I don't even know if those
17 documents still exist or if there are any, because we've never
18 ever been asked for that so I've never looked for it, Your
19 Honor. I can't tell you one way or the other.

20 MR. VAN DER WEELE: Your Honor --

21 THE COURT: Hang on, hang on.

22 You might not have to produce it if -- depending on
23 your answer to this question.

24 MS. MANOLIO: Sure.

25 THE COURT: With respect to the initial

1 relationship -- not the transaction documents but how the
2 relationship came to be -- do you anticipate using any of those
3 documents to support your damages claims?

4 MS. MANOLIO: No, Your Honor. Not at all.

5 THE COURT: All right. Mr. Van Der Weele, go ahead.

6 MR. VAN DER WEELE: Well, so I'm not asking for the
7 ones that -- where the plaintiff originally became a dealer of
8 FP, because that was before the dealer agreement -- entered
9 into the agreement with Pitney. So I don't care about those.
10 That would have been prior to, you know, sometime prior to the
11 year 2016. So I'm not asking for those.

12 What I am asking for, though -- and I can't believe
13 there are no documents, given what the plaintiff is -- what
14 they've said and what the letter is, is that they -- again, the
15 chronology is they're a dealer and then they get a letter
16 that's been produced that says you're no longer a dealer. What
17 happened after that is what I am looking for, where there would
18 have to be some documents that have to at least say you're a
19 dealer again, or something that says if you buy -- you know, if
20 you buy a million dollars of product then you'll become a
21 dealer, and then there's a purchase order for a million
22 dollars. Well, whatever it is, there had to be some
23 communications to get them reinstated.

24 When Ms. Manolio says, well, that's not what it asks
25 for, you're morphing the request, well, no, because after

1 plaintiff got that cancellation letter, it was no longer an
2 authorized dealer, so to get reinstated, it did have to be --
3 it became an authorized dealer for a second time, and that's
4 squarely within the Request No. 30.

5 THE COURT: Sure. All right.

6 Ms. Manolio, it seems a fair request to ask for any
7 documents that memorialize or reflect or pertain to or
8 establish the business relationship between POA and FP. And my
9 question is, have all those documents been produced?

10 MS. MANOLIO: If, Your Honor, that were the case,
11 then you're right. But POA was sent a cancellation letter and
12 was told it was going to be canceled. The subsequent
13 information was done in person because the president of POA
14 immediately went and met in person with SP. There will be
15 financial documentation which I absolutely will provide as part
16 of the subsequent stuff. I do owe those documents, there's no
17 doubt about that. They're just not in front of the Court right
18 now, what we've agreed that I will produce, and I absolutely
19 will produce the financial documents, including the PO that
20 shows what they had to pay or agreed to to keep their FP
21 sponsorship, if you will, or relationship.

22 THE COURT: Okay.

23 MS. MANOLIO: But the reason there's not going to be
24 a trail of documents is because those documents don't exist.
25 This was a long-term relationship, with the president of the

1 company negotiating in person with the other side.

2 THE COURT: Let's assume the letter was received that
3 you're going to be terminated. The CEO or whoever gets on a
4 plane or however and meets in person with the FP CEO, and they
5 reach an agreement in person. All right. And so the
6 relationship isn't actually formally terminated.

7 Just to be clear, there's no follow-up letter from
8 POA's person or email that confirms the agreement reached
9 between us that our relationship will continue and/or continue
10 under the following circumstances. There's nothing else like
11 that?

12 MS. MANOLIO: Your Honor, I want to say there is not,
13 but in an abundance of caution, I will tell you that we will do
14 the search again, but I will tell you for a fact that no, we've
15 never seen that as of today, and we did do the searches, and
16 exact search terms that were requested by Pitney Bowes. And my
17 client's response was that's because when I got this letter
18 saying we're going to be canceled -- they weren't canceled,
19 you're going to be in 90 days, they resolved it before it
20 became an issue, and they resolved it by committing to a huge
21 purchase order, which I will produce.

22 THE COURT: All right. Good. Then just have your
23 client run the search again to be sure.

24 MS. MANOLIO: Absolutely.

25 THE COURT: Confirm that to Mr. Van Der Weele that

1 it's been completed and no further documents were found, or if
2 they were, produce them.

3 MS. MANOLIO: Absolutely. No problem.

4 THE COURT: Mr. Van Der Weele, does that take care of
5 No. 30 at least for now?

6 MR. VAN DER WEELE: Yes, it does, Your Honor.

7 THE COURT: Good.

8 Let's go back to the third motion to compel and the
9 possible fourth motion.

10 With respect to the third motion, Mr. Van Der Weele,
11 just to summarize, you said you're still waiting for a response
12 from POA.

13 Ms. Manolio, your thoughts?

14 MS. MANOLIO: I have absolutely been working with
15 Mr. Van Der Weele, have given subsequent information, still
16 have subsequent information to give. And so that everyone
17 feels comfortable, I'm actually flying up to Portland tomorrow
18 to meet with POA and go through documents in person to produce
19 what I know is still outstanding to Mr. Van Der Weele, but I've
20 been trying to just get a time with their CFO to sit down and
21 go through documentation.

22 But I don't believe it's -- that the third is at
23 issue or is going to become an issue, as I don't believe that
24 the fourth is going to become an issue because I've committed
25 to certain things and I intend to abide by what I've committed

1 to, it's just been a matter of logistics and that's it.

2 THE COURT: Let me ask you this question.

3 MS. MANOLIO: Sure.

4 THE COURT: For you to produce all the documents that
5 you believe will put the third motion to compel to rest and
6 avoid a fourth motion to compel, how much time will you need?

7 MS. MANOLIO: Again, Your Honor, my position is that
8 everything should be inclusively provided by the end of March,
9 but I intend to get Mr. Van Der Weele the documents that I know
10 are outstanding probably within the next two weeks. I'm going
11 up not tomorrow but the day after, and hope to make production
12 next week. I know there will be subsequent questions, I just
13 know there will. But I'm committed to work with him in good
14 faith to get him anything subsequent, as, Your Honor, I've also
15 committed to allow him to have informal interviews rather than
16 depositions of the financial information or the witness for the
17 financial information that we're providing.

18 THE COURT: Thank you.

19 Hang on a minute, please.

20 MS. MANOLIO: Sure.

21 THE COURT: All right. I'm looking at the most
22 recent joint status report, Docket 93, filed on January 24, and
23 I'm looking at that section really that begins on page 4, case
24 schedule following completion of fact discovery.

25 Right now does everyone agree fact discovery closes

1 on March 31? Ms. Manolio?

2 MS. MANOLIO: I am good with it, Your Honor, yes.

3 THE COURT: Good.

4 Mr. Van Der Weele?

5 MR. VAN DER WEELE: I guess I'd rather -- just
6 because it's taken so long to get some documents, I would
7 rather either add some time to that or wait until I see what I
8 get from Ms. Manolio and what I think is still open. The last
9 time we got anything was in November, and I know there are
10 issues outstanding, and I'd be thrilled if I got anything next
11 week or whatever, but I just don't have a high degree of
12 confidence, and there may be additional things. So that's an
13 equivocal answer, I realize, but I just don't have a great deal
14 of confidence that it will be done by March 31.

15 THE COURT: All right. Here's what we're going to
16 do. Fact discovery will close on Friday, April 22nd, and
17 that's it for fact discovery. That is a hard date. Everything
18 must be produced by then, all depositions of fact witnesses
19 taken by then.

20 I am looking at your chart of agreed-upon case
21 schedule following the completion of fact discovery, and it
22 seems to me you're -- I'm looking. It seems you're in
23 agreement on both the sequence and timing for expert discovery.

24 Ms. Manolio, correct?

25 MS. MANOLIO: Yes, Your Honor.

1 THE COURT: Mr. Van Der Weele, correct?

2 MR. VAN DER WEELE: Yes. Yes, we are, Your Honor.
3 There was one -- there was one date in there I thought we could
4 make a little clearer, but we certainly could, based on what is
5 in this chart for phase one, because phase two doesn't -- you
6 know, doesn't kick in until after your ruling on summary
7 judgment. But it seems to me that with an April 22 discovery
8 date cutoff, close of fact discovery, we should be able to put
9 together a proposed, you know, case schedule for Your Honor
10 that takes us through phase one.

11 THE COURT: Yes. Good. That takes care of item 5 on
12 page 7 of your joint status report, the deadline for completion
13 of fact discovery, but I will add this clarification with
14 respect to item 6. I'm extending fact discovery for the
15 purpose of allowing the parties to complete the discovery that
16 is in process, fact discovery, which means that all requests
17 for production and interrogatories that have been served is
18 what there will be, and you are working with that, and any
19 supplements to those on either side.

20 I do not think at this point in the case we need any
21 additional requests or interrogatories. I'm allowing the
22 additional time so that the parties can complete the steps
23 we've talked about today in response to the renewed motion to
24 compel and in an attempt to avoid the Court having to rule on
25 the third motion and the defendant having to file a fourth.

1 All right. And then expert discovery will commence,
2 and you agreed on the timing of that.

3 We have cleared up our examples confusion. We know
4 where we are on that.

5 Ms. Manolio will ask her client to run an additional
6 check on the POA-FP relationship after the "we're going to
7 terminate you letter," and apparently in her effort to make
8 sure all documents are produced, but have not yet been
9 produced, one thing she'll be doing is come up here to Portland
10 to assist her client in that effort.

11 Ms. Manolio, when you come up here, be aware it's
12 very cold and clear.

13 MS. MANOLIO: I've heard, I've heard.

14 THE COURT: Wear warm clothes.

15 MS. MANOLIO: Thank you.

16 THE COURT: All right. Because it's also windy.

17 MS. MANOLIO: Things we're not used to in Phoenix,
18 Arizona.

19 THE COURT: Well, there's that, although we had some
20 of your weather last summer up here, so there you go.

21 MS. MANOLIO: I remember.

22 THE COURT: 116 degrees, it's pretty hot, I'll tell
23 you that.

24 MS. MANOLIO: I can't imagine it in a place like
25 Portland where you're not used to it. Here we're used to it,

1 we're prepared for it.

2 THE COURT: Well, it killed a lot of things up here,
3 trees, plants, flowers. Wow, it was something.

4 Mr. Van Der Weele, anything else we should cover?

5 MR. VAN DER WEELE: No, Your Honor. Thank you.

6 THE COURT: Ms. Manolio, anything else?

7 MS. MANOLIO: A side question. How is your mother?

8 THE COURT: She's in memory care. Thank you for
9 asking.

10 MS. MANOLIO: I'm apologize. I'm sorry to hear that.

11 THE COURT: No apology needed. She's going on 93, so
12 it was not entirely unexpected. Thank you for inquiring.

13 MS. MANOLIO: Thank you. I thought about you many
14 times, and I know Mr. Van Der Weele and I both feel the same,
15 family is always first, so just wanted you to know it's been on
16 my mind.

17 THE COURT: Thank you.

18 All right, everyone. Thank you for being present
19 today. I appreciate it. I hope you all have a good day, and
20 with that, we're adjourned.

21 MS. MANOLIO: Thank you, Your Honor.

22 Thanks, Phil.

23 MR. VAN DER WEELE: Thank you, Your Honor.

24 THE COURT: Bye-bye.

25 (Proceedings concluded at 2:50 p.m.)

--o0o--

I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature or conformed signature is not certified.

/s/Bonita J. Shumway

March 1, 2022

BONITA J. SHUMWAY, CSR, RMR, CRR
Official Court Reporter

DATE

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